



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,514	07/06/2001	Abbas Rashid	NEXSI-01022US0	6870
28863	7590	12/09/2005	EXAMINER	
SHUMAKER & SIEFFERT, P. A. 8425 SEASONS PARKWAY SUITE 105 ST. PAUL, MN 55125			MOORE JR, MICHAEL J	
			ART UNIT	PAPER NUMBER
			2666	

DATE MAILED: 12/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/900,514	Applicant(s) RASHID ET AL.	
	Examiner Michael J. Moore, Jr.	Art Unit 2666	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

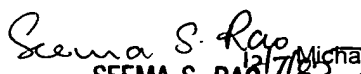
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-38.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


SEEMA S. RAO
 Michael J. Moore, Jr. **MM**
 Examiner
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

Continuation of 3. NOTE:

The amendments made to claims 15-35, 37, and 38 raise new issues that require further consideration and/or search. New claims 39 and 40 also require further consideration and/or search.

Continuation of 11. does NOT place the application in condition for allowance because:

Regarding independent claims 1 and 36, Applicant argues that Dai (U.S. 6,658,016) fails to describe an apparatus having a set of data rings coupling the set of input ports and the set of sink ports within that apparatus and rather describes a packet switching fabric in which a plurality of switching devices are coupled in a ring fashion. However, based on the claim language of claims 1 and 36, it is held that the switching fabric 10 of Figure 1 of Dai can be construed broadly to be "an apparatus" comprising bidirectional ports 14 (input and sink ports) as well as data ring 19 composed of data ring segments 18.

Regarding independent claims 1 and 36, Applicant also argues that Lu (U.S. 6,480,911) fails to teach a sink port that calculates a weighted average bandwidth for each of the plurality levels and rejects packet data when the weighted average bandwidth for at least two of the priority levels exceeds a predetermined value. However, Lu does teach input queues 320, 322, 324, 326 (input ports) in Figure 5 that receive data packets for high, medium, and low classes (plurality of priority levels). Lu also teaches the distinguishing of different classes of packets based upon characteristics such as transmission capacity (bandwidth) on column 1, lines 20-33. Lu further teaches the establishment of minimum bandwidth bounds for each class (priority) of traffic on column 2, lines 50-60. Lu further teaches the establishment of weights for each class of traffic based upon the bandwidth bounds of each class of traffic on column 4, lines 57-60. Lu further teaches on column 10, lines 30-40 how data packet dropping (rejection) begins with low class traffic (packet data) when the total network capacity (predetermined value) is exceeded. It is held that the above teachings eluded to in the previous Office Action teach the concept of calculating a weight (weighted average bandwidth) for each class (priority) of traffic and regulating the rejection of packet traffic based upon the bandwidth capacity of each class of traffic.

Regarding the provisional obviousness-type double patenting rejection of claims 1, 15, 22, 25, 36, and 37, that was made in the previous Office Action in view of copending application 10/036595, Applicant's response was that the provisional status of the rejection is noted and that the issue will be addressed if and when the rejection is formally applied. This response does not overcome the obviousness-type double patenting rejection as this rejection was formally applied in the previous Office Action. The rejection is a provisional obviousness-type double patenting rejection because the conflicting claims of the copending applications have not in fact been patented.